

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

REF:OCCL:DH

Contested Case KA-07-05

October 26, 2007

**Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii**

REGARDING: Withdrawal of Petitioner David Smith from Contested Case KA-07-05

SUBJECT PETITONS: Docket No. KA-07-05
In the matter of a Contested Case Petition Regarding Enforcement Case KA-06-72 Regarding the Unauthorized Construction of a Chain Link Fence Located Within the Conservation District, Subject Parcel TMK: (4) 5-8-009:025, Wainiha, Hanalei, Island of Kauai

BACKGROUND:

On January 12, 2007, the Board of Land and Natural Resources' (BLNR) heard Enforcement Case KA-06-72 regarding the unauthorized construction of a chain link fence, located within the Conservation District, Subject Parcel TMK: (4) 5-8-009:025, Wainiha, Hanalei, Island of Kauai. During the land board meeting, a oral request was made for a Contested Case.

On January 22, 2006, the OCCL received a petitions from Michael C. Carroll, counsel to the landowner, and several interveners. The BLNR approved the selection of a Hearing Officer and the Contested Case has been proceeding over the last several months.

On October 15, 2007, counsel to Davis Smith withdrew the Contested Case petition, dismantled the fence, and submitted a check for the \$2,200.00 fine (**Exhibit 1**).

On October 17, 2007, the Hearing Officer issued Minute Order No. 4 noting the petitioner's withdrawal of Contested Case KA-07-05 (**Exhibit 2**).

ITEM K-4

DISCUSSION:

Staff recommends that the BLNR accept the petitioner's withdrawal of Contested Case KA-07-05; subject to the original conditions of Enforcement Case KA-06-72. Staff also recommends that the BLNR re-affirm staff's prior recommendations.

Staff therefore recommends,

RECOMMENDATION:

That the Board of Land and Natural Resources accept petitioner David Smith's withdrawal of Contested Case KA-07-05 as he has removed the fence that was the subject of Enforcement Case KA-06-72, and has paid the \$2,200.00 fine; and that the BLNR re-affirm the following terms and conditions, which are as follows:

1. The landowner violated the provisions of Chapter 183C, Hawaii Revised Statutes (HRS), and Chapter 13-5, Hawaii Administrative Rules (HAR), in one instance by constructing a shoreline fence structure. The landowner is fined a total of \$2,000.00 for one Conservation District violation plus an additional \$200.00 for administrative costs associated with the subject violation; total fines \$2,200.00;
2. The landowner shall remove the fence within the Conservation District;
3. The landowner shall comply with all applicable statutes, ordinances, rules, and regulations of the Federal, State and County governments;
4. That in the event of failure of the alleged to comply with any order herein, the landowner shall be fined an additional \$2,000.00 per day until the order is complied with; and
5. That in the event of failure of the landowner to comply with any order herein, the matter shall be turned over to the Attorney General for disposition, including all administrative costs.

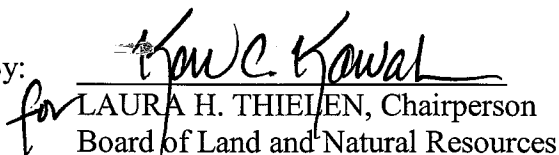
Respectfully submitted,



Dawn T. Hegger
Staff Planner

Approved for submittal:

By:



for LAURA H. THIEL, Chairperson
Board of Land and Natural Resources

Of Counsel:

BAYS DEEVER LUNG
ROSE & HOLMA

A. BERNARD BAYS 969-0
Attorney At Law
A Law Corporation
MICHAEL CARROLL 7583-0
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, Hawaii 96813
Telephone: (808) 523-9000

Attorneys for Petitioner
David Smith

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

BEFORE THE BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

Petition for a Contested Case Hearing	)	Docket No. CC KA-07-05
Regarding Enforcement Case KA-06-72)	
Regarding the Unauthorized Construction	)	NOTICE OF WITHDRAWAL OF
of a Chain Link Fence Located Within	)	PETITION FOR CONTESTED CASE
the Conservation District, Subject Parcel	)	HEARING; EXHIBITS A-C; CERTIFICATE
TMK: (4) 5-8-009:025, Wainiha,	)	OF SERVICE
Hanalei, Kauai.)	
_____)	

NOTICE OF WITHDRAWAL OF PETITION FOR CONTESTED CASE HEARING

Petitioner David Smith ("Petitioner"), by and through his attorneys, Bays Deaver Lung Rose & Holma, hereby withdraws his Petition for Contested Case Hearing, filed with the Department of Land and Natural Resources on January 22, 2007.

Petitioner further confirms that he has complied with all terms relating to this matter, and set forth in the letter from Samuel J. Lemmo dated January 15, 2007.

EXHIBIT 1

On October 15, 2007, Petitioner has transmitted to the Department of Land and Natural Resources ("Department") a check in the amount of \$2,200.00 representing all fines and administrative costs levied herein. Petitioner has further removed the fence as requested by the Department. Attached hereto as Exhibits A-C are photographs taken today confirming the removal of the fence.

There are no remaining claims or issues.

DATED: Honolulu, Hawaii, October 15, 2007.

A handwritten signature in dark ink, appearing to read "Michael C. Carroll", is written over a horizontal line.

A. BERNARD BAYS
MICHAEL C. CARROLL

Attorneys for Petitioner
David Smith





EXHIBIT B



EXHIBIT C

BEFORE THE BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

Petition for a Contested Case Hearing	)	Docket No. CC KA-07-05
Regarding Enforcement Case KA-06-72)	
Regarding the Unauthorized Construction	)	CERTIFICATE OF SERVICE
of a Chain Link Fence Located Within)	
the Conservation District, Subject Parcel)	
TMK: (4) 5-8-009:025, Wainiha,)	
Hanalei, Kauai.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties by


U.S. Mail, postage prepaid, on October 15, 2007, addressed as follows:

Gilbert S.C. Keith-Agaran, Esq.
Takitani & Agaran
24 North Church Street, Suite 409
Wailuku, Maui, Hawaii 96793

Julie China, Esq.
Deputy Attorney General
Land/Transportation Division
Kekuanaoa Building, Room 300
465 S. King Street
Honolulu, Hawaii 96813

Russell A. Suzuki, Esq.
Robyn B. Chun, Esq.
Deputy Attorneys General
425 Queen Street
Honolulu, Hawaii 96813

DATED: Honolulu, Hawaii, October 15, 2007.

A handwritten signature in dark ink, appearing to read "Michael C. Carroll", is positioned above a horizontal line.

A. BERNARD BAYS
MICHAEL C. CARROLL

Attorneys for Petitioner
David Smith

GILBERT S.C. KEITH-AGARAN
TAKITANI & AGARAN, Law
Corporations
24 North Church Street, Suite 409
Wailuku, Maui, Hawaii 96793
Tel. No. (808) 242-4049
Fax. No. (808) 244-4021

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DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

Hearings Officer

BEFORE THE BOARD OF LAND AND NATURAL RESOURCES

STATE OF HAWAII

Petition for a Contested Case Hearing	)	Docket No. CC KA-07-05
Regarding Enforcement Case KA-06-72)	
Regarding the Unauthorized Construction of	)	MINUTE ORDER NO. 4:
a Chain Link Fence Located Within the	)	WITHDRAWAL OF CONTESTED
Conservation District, Subject Parcel TMK:	)	CASE PETITION; CERTIFICATE
(4) 5-8-009:025, Wainiha, Hanalei, Kauai.	)	OF SERVICE
)	
)	
)	

MINUTE ORDER NO. 4: WITHDRAWAL OF CONTESTED CASE PETITION

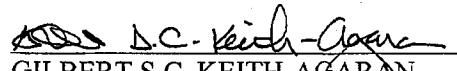
This matter is an enforcement action by the Department of Land and Natural Resources ("the department") regarding the construction of a chain link fence allegedly in the conservation district without the required permit(s). On January 22, 2007, landowner David Smith petitioned for a contested case.

On October 15, 2007, Michael Carroll, Esq., counsel for Petitioner David Smith filed a Notice of Withdrawal of Petition for Contested Case Proceeding ("Notice"). Petitioner stated in his Notice that removal of the fence and payment of \$2,200.00 as fines and administrative costs levied by the department represented compliance with the terms and conditions of the enforcement action.

Based on Petitioner's notice and representations, CC KA-07-05 is therefore
withdrawn.

APPROVED AND SO ORDERED:

DATED: Wailuku, Maui, Hawaii, October 16, 2007.


GILBERT S.C. KEITH-AGARAN

Hearings Officer

Petition for a Contested Case Hearing Regarding Enforcement Case KA-06-72 Regarding
the Unauthorized Construction of a Chain Link Fence Located Within the Conservation
District, Subject Parcel TMK: (4) 5-8-009:025, Wainiha, Hanalei, Kauai, Docket No. CC
KA-07-05; MINUTE ORDER NO. 4: WITHDRAWAL OF CONTESTED CASE
PETITION

CERTIFICATE OF SERVICE


The undersigned hereby certifies that Minute Order No. 4 was duly served upon the following parties as indicated, by means of U.S. Mail, postage prepaid and/or via fax on October 17, 2007 addressed as follows:

Michael C. Carroll
Alii Place, 16th Floor
1099 Alakea Street
Honolulu, Hawaii 96813
808-523-9000 phone
808-533-4184 fax

Russell A. Suzuki
Department of the Attorney General
Administration Division
425 Queen Street
Honolulu, Hawaii 96813
586-0618 phone
586-1372 Fax

Julie China
Department of the Attorney General
Land / Transportation Division
Kekuanaoa Building, Room 300
465 South King Street
Honolulu, Hawaii 96813
808-587-2937 phone
808-587-2999 Fax

DATED: Honolulu, Hawaii, Oct. 17, 2007.



DAWN T. HEGGER
Office of Conservation and Coastal Lands,
Department of Land and Natural Resources